# VOLUNTARY REPOSSESSION NOT AN EASY WAY OUT

*Grafenwoehr Law Center*—Your car payment is eating you alive. You feel as if the car owns you, instead of the other way around. Your wife had to got to the hospital, and you are now 60 days past due on the car payment. What are you going to do? You have heard that banks and finance companies allow voluntary repossessions, whereby the borrower simply turns the car in. "Maybe I should just let the bank keep the car!" Although that may be an option, it is not a cheap way out. Before you leave the car with the lender, you should know what the lender has in store for you.

Even when a debtor surrenders collateral (in this case, an automobile) to the creditor, the creditor always retains the right to pursue the debtor for the balance owing on the loan. The lender is entitled to have the loan repaid in full and to recover all extra costs associated with re-selling the car, along with interest, late charges, attorneys' fees, and court costs. While creditors have a legal obligation to deal fairly in the disposal of the collateral, a voluntary repossession almost never affords financial relief for the borrower.

When the lender sells a repossessed car to raise money to pay the loan, he must sell the car for a reasonable price under the circumstances. The lender does not have to sell the car at its full retail value. Usually he will be selling the car wholesale, likely at an auction or at a "repo" sale. Either way, the lender will not get the price the borrower could have got selling it himself by placing an advertisement in the newspaper.

The lender will take the money from the sale, subtract his expenses, and apply the remainder to the unpaid loan. There is never enough money left to pay off the loan. The difference between the amount raised by selling the car and the balance owing on the loan is called a deficiency. The borrower still owes the lender the amount of the deficiency, and it may well be more than half the original purchase price of the car!

But how can this be? Consider: you paid $20,000 for the car when new. You paid a down payment of $2,000 and borrowed 90% over a term of five years, also financing the sales tax. Your loan is for $19,000. Because new cars depreciate in value very quickly, the day you drove the new car off the dealer's lot it became a used car and was then only worth $15,000. You made payments on time for a few months but got behind and now owe late charges. Early in the life of any loan, the payments are almost entirely for interest, and with the late fees, you have hardly paid down the principal of the loan at all. When you decide to allow the lender to take the car back, the balance on the loan is still $18,000. You remain liable for repaying this sum to the lender. The lender sells the car at auction two weeks later for $12,000, a reasonable wholesale price.

The lender has incurred various expenses associated with the surrender of the car: storing the vehicle at a secure lot for two weeks at $15 a day; an attorney's fee of $400; car detailing in preparation for the auction, $60; transporting the car to the auction lot, $50; advertising costs, $40; and a sales commission to the auction company of $500.

Altogether the lender had expenses of $1,300. This means there is a deficiency in the amount of $7,300 ($18,000 balance on the loan plus $1,300 expenses, less the $12,000 realized at auction). And this is not a static figure—interest, usually at an exorbitant rate, continues to accrue on the unpaid amount of the deficiency. The borrower no longer has a car, but he has acquired a debt of about half the retail value of the car.

The borrower, being a soldier, thinks he has walked away from his obligation by turning in the car. Then he PCS's to Germany, ignoring letters from the lender and collection agencies that may reach him from time to time. When he is re-assigned to the United States three years later, he finds that the principal of the deficiency is now $13,300 (interest compounding daily at an annual rate of 20%), plus another $2,700 in late charges and collection fees, for a total of $16,000!

At this point, the borrower's only real recourse is to file for bankruptcy, which will severely limit his ability to obtain credit for many years thereafter. So bear the foregoing in mind before taking what seems to be "the easy way out" on a car loan.